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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 56/2016**

Date of Decision : 10th November, 2016

RAVINDER SOLANKI & ORS

..... Petitioners

Through: Mr. Shanker Raju & Mr. Nilansh
Gaur, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Gautam Narayan, ASC with Mr.
Shatrajit Banerji, Advocate with Mr.
Manoj Kumar, LA-Zone-9 & Ms.
Seema Goswami, DEO-Zone-9 for
respondents.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

With the consent of the counsel for the parties, we have taken up the writ petition for hearing and disposal. The original disciplinary records have been produced for our perusal.

2. This writ petition by Ravinder Solanki, Gajendra Singh, Jai Bhagwan, Jagdish Prasad, Dinesh Kumar, Gopal Lal Meena, Hotu Ram and Than Singh, who are Trained Graduate Teachers (TGT, for short) in different subjects, impugns the common order dated 03.12.2015 passed in eight separate Original Applications filed by them. The order under challenge passed by the Principal Bench of the Central Administrative Tribunal

(Tribunal, for short) dismissed the Original Applications and upholds the order dated 27.05.2014 imposing penalty of reduction to three stages lower in the time scale of pay for three years with further direction that the petitioners shall not earn any increment during the aforesaid period. Further, the reduction would not have the effect of postponing future increments payable to the petitioners.

3. The petitioners were assigned invigilation duty in Common Annual Examination, held in March, 2007 at the Government Boys Middle School (presently Government Boys Senior Secondary School), E-Block, Jahangir Puri.

4. On receipt of complaints of mass cheating in the examination centre, an enquiry team comprising of two officers namely, Indra Ranga and R. P. Yadav was constituted to make a preliminary enquiry. In furtherance of their report, disciplinary proceedings were initiated on almost identical charges. For convenience, we reproduced the statement of articles of charge issued to Ravinder Solanki, which reads:-

“Article-I:-

That the said Sh. Ravinder Solanki, TGT Hindi While working in GBMS E-Blk Jahangirpuri presently upgraded as GBSS E-Block Jahangirpuri, was deployed on invigilation duty during the Common Annual Examination 2007, and was found involved to promote the Mass-Cheating and dictating the answers of some questions and to allow the students to copy from another students and to help the students in order to secure pass marks in each subject during the common annual examination 2007.

The above act is undesirable on the part of Sh. Ravinder Solanki, TGT Hindi being a Govt. teacher who is the role model of their students.

Thus, Sh. Ravinder Solanki, TGT Hindi has acted in a manner unbecoming of a Govt teacher which is in violation of Rule 3(1) (iii)

of CCS Conduct Rule 1964 ”

5. The petitioners submitted their reply and contested the said proceedings and denied the allegations.

6. Indra Ranga had appeared as the sole witness in the enquiry proceedings and had made the following statement:-

“The undersigned inspected the school along with Sh.R.P. Yadav Education Officer Zone XIII as per the direction of worthy DE and the inspection team submitted the report vide No 395 dt 28.5.07 and again the statement has given on 22.9.11 and now there is no change in my statement.”

The statement merely refers to the preliminary report, the true copy of which was the only document relied upon before the inquiry officer.

7. The relevant portion of the preliminary inquiry report relating to the petitioners reads:-

“Conduct of Examination:-

All the teachers were found involved in promote (sic) mass cheating and dictating the answers of some questions in Hindi, English and Science. Some group of questions i.e. 1,3,19,6,9,18,13,16,22,23,24 and 25 have been attempted by all the students from which it seems that students have copied from each other and from sample papers openly.”

The aforesaid findings recorded in the preliminary inquiry are ambiguous and unfathomable. The first sentence records the final conclusion, without referring and elucidating on the material. The second sentence is vague, as it refers to some questions without specifying which question paper and the names of the invigilators who were present in that particular room. Indra Ranga in her statement quoted above had not elaborated and expounded on the basis and reasons for her finding in the

pending enquiry report. Question papers were not produced and tendered in evidence.

8. The enquiry officer's report dated 30.05.2013, had held:-

"The P.O. was requested to supply the copies of document relied upon in the chargesheet. He provided each C.O. a copy of inspection report which is the only document as per Annexure 3 of the chargesheet. The CO was asked whether he required any other documents which were relied upon in the inspection report. However the P.O. shown his inability and stated the same in his brief submitted on 10.04.2013 on page 2 stating that 'efforts have been made to obtain the record pertaining to his case but all in vain. No documents was produced by the undersigned in support of the article of charges except the inspection report by the Inspection Team'.

In the absence of any of the document the witnesses in Article IV in the chargesheet, Mrs. Indira Ranga and Mr. R. P. Yadav were called. Mrs. Indira Ranga appeared before the undersigned on 20.11.2012 and made the statement annexed at P-I. She merely stated that she had nothing to state except whatever had been stated in the Inspection Report dated 28.05.2007.

Inspite of best effort by the undersigned as well as of the P.O., Shri R. P. Yadav, the then E.O., Now DDE (Centre) did not appear as witness. He is a senior officer and his reluctance to appear, dilute the charges framed against the CO. The inspection report dated 28.05.2007 containing the inspection made by Mrs. Indira Ranga and Sh. R. P. Yadav of three schools and one of them is Govt. Boys Middle School, E-Block, Jahangir Puri to which the C.O. belongs. The inspection report gave cognizance to the seating plan arrangement during examination, evaluation of answer scripts, posting of marks in different record and concluded that 'All the staff including HOS was involved in mass cheating to allow the students to copy from another students and to help the students in order to secure pass marks in each subject.

It is very unfortunate that no supporting documents are available. Even the inquiry report does not contain the classes which were

sitting in the room, name of the students who were found copying, marks obtained by each student etc. In the absence of any substantial data, the inspection report is just like a sweeping document without any solid base. Such senior officers merely stated that they have gone through broadsheet and result register and had not mentioned the beneficiary who were found indulging in copying.

Every effort was made to trace the records and I on the request of the P.O. wrote letters to the E.O. Zone-IX as well as to the then HOS and the present HOS of GBMS (presently GBSS). They showed their inability to provide the document. Their replies are placed in the file at page 31 & 32 respectively.

The C.O. in his defence demanded the record on which the inquiry report was based but it was not possible to provide the same. He also pleaded that it is the prerogative of the HOS to make the seating arrangement and to post invigilator in the room. He is, therefore, not responsible for the inadequate desks and of otherwise wrong seating arrangement.”

Thus, the enquiry officer had affirmatively held that the charges were not proved.

9. The disciplinary authority (Director of Education) issued the disagreement note, observing that the enquiry report was fraught with flaws. Mr. R. P. Yadav (by then the Deputy Director of Education, Central, New Delhi), an important witness, was not summoned. The enquiry officer had failed to give importance to the findings in the preliminary enquiry report by two senior officers and accepted by the higher authority. The enquiry officer had also failed to give due regard and consideration to the deposition of the prosecution witness, i.e., Indra Ranga. Ill motive or mala fides could not have been attributed to Indra Ranga and R. P. Yadav, who indicted the petitioners in their preliminary inquiry report.

10. The petitioners had contested and submitted their reply to the disagreement note. The assertion was that the department had failed to produce witnesses and this could be an excuse to presume that the charges were proved. In the statement of Indra Ranga, it was stated that the action taken report submitted by her was not on record or supplied to the petitioners. It could not be presumed, that the petitioners were aware of the contents of the said report. In the absence of documentary evidence, it would not be fair to conclude that the petitioners were guilty, especially when one of the officers, R. P. Yadav had not entered the witness box and made any statement.

11. The Disciplinary Authority vide order dated 27.05.2014 held as under:-

“ AND WHEREAS, regarding the contention/observation of the IO that ‘every effort was made to trace the records and I on the request of the PO wrote letters to the EO Zone-IX as well as to the then HOS and the present HOS of GBMS (presently GBSS). They showed their inability to provide the document’ it is seen that the CO had not asked for any additional documents to be examined for presenting his case. Further, even the IO has no where mentioned in the ordersheets as to the requirement of any additional documents and their purpose in the inquiry process. It is also observed that the Inquiry Officer vide letter dated 01.02.2013 has written to the Principal, GBSSS, E Block, Jahangirpuri seeking ‘relevant records which were checked by the inspecting team lying under your custody’. However, no specific document has been sought by the IO. Further, vide letter dated 23.02.2013 also the IO has merely asked Sh. Braham Singh, the previous Principal of the school, to only provide the relevant papers with reference to letter written by Sh. M. S. Yadav, the Vide Principal of GBSS, E Block, Jahangirpuri. It is worth mentioning that vide the aforesaid letter dated 06.02.2013 Sh. M. S. Yadav has only requested Sh. Braham Singh to provide the acknowledgement/receipt of the handing over of record to inspection

team which in no way can be considered relevant or important for coming to a conclusion regarding the inquiry proceedings. It shows that proper application of mind was not made by the IO before seeking additional documents nor any since effort made to obtain them. Further, regarding the observation of the IO that the CO in his defence had demanded the record on which the inquiry was based but it was not possible to provide the same it is observed that neither any written request for the same is available on record nor any entry regarding the same has been made in the daily ordersheet.

AND WHEREAS, the standard of proof required in a disciplinary case is that of preponderance of probability and not necessarily the proof beyond reasonable doubt and I am of the view that the facts discussed above prove the charges made against the CO.

NOW, THEREFORE, after considering the totality of the case and the representation of the CO dated 28.01.2014, I, Padmini Singla, Director of Education being the Disciplinary Authority, impose the penalty of reduction of three stage lower in the time scale of pay for three years upon Sh. Ravinder Solanki, TGT (Hindi) with the further direction that he shall not earn any increment of pay during the aforesaid period and on expiry of such period the reduction will not have the effect of postponing the future increment of his pay. ”

12. The Disciplinary Authority has lamented the approach of the enquiry officer, who had failed in his efforts and neglected to procure witness and get the documents to prove the charges. Adverse observations have been made as to the manner in which the investigation had been conducted and it was observed that there was non-application of mind. Pertinently, the Disciplinary Authority did not remand the case for fresh enquiry or himself conduct further enquiry. He did not record statement of R.P. Yadav or get hold of the question papers or even ask Indra Ranga to elaborate and elucidate on her report. Yet, the Disciplinary Authority held that on the basis of preponderance of probability, that the charges were proved as it was not

necessary to prove the charge beyond reasonable doubt. Penalty of reduction to three stages lower in the time scale of pay for three years with further direction that the petitioners would not earn any increment of pay during the aforesaid period was imposed.

13. The Disciplinary Authority held the penalty imposed was required as teachers are expected to set good example in the classrooms by their conduct. The petitioners were involved in allowing and promoting the mass cheating and dictating the answers of some questions, which was unethical and serious impropriety. The department has to follow a zero tolerance policy towards such acts.

14. The appeals preferred were dismissed by the Appellate Authority vide order dated 13.11.2014.

15. The petitioners thereafter had filed the OAs, which have been dismissed by the impugned order. The Tribunal holds that the findings or conclusions of the Disciplinary Authority were based on evidence and the findings as recorded are such as a reasonable person would have reached. The scope of judicial review was limited, for the tribunal cannot re-appreciate or re-examine evidence. Procedural error or lapse in holding the enquiry was not established.

16. We have, as noted above, called for records of the disciplinary proceedings and have thoroughly examined the papers on record. The sole document relied upon by the presenting officer was the preliminary enquiry report. We have commented on the said report. Indra Ranga, as a witness, had averred that she had inspected the school along with R. P. Yadav, Zone-XIII on the direction of Director of Education and submitted report dated 28.05.2007. She had made a statement on 22.09.2011. The statement dated

20.11.2012 is identical. It is in fact a letter, which states that the witness had conducted inspection along with R. P. Yadav, and had submitted the report dated 28.05.2007. This statement does not in any manner remotely prove and establish the allegations.

17. The question papers relied upon and referred to in the preliminary enquiry report were not brought on record and produced before the Enquiry Officer, Disciplinary Authority or Appellate Authority. A reading of the preliminary enquiry report by Indra Ranga and R. P. Yadav states that the teachers were involved in promoting mass cheating and dictating the answers of some questions in Hindi, English and Science. No evidence or material was brought on record in the disciplinary proceedings to show and establish the said allegations and assertions. The preliminary report makes reference to answers, without indicating the question paper and the subject. Having considered the said aspects, we do not think that the charge even by applying most liberal standard was proved or established. The allegations against the petitioners are serious and, in case, they were involved, they should certainly be punished. However, assumptions and surmises are not sufficient to bring home the charge. Rule of preponderance of probability has to be followed. This fundamental mandate and requirement is unfortunately missing and lacking.

18. We feel that this is a case of no evidence and, therefore, the finding of the Disciplinary Authority disagreeing with the enquiry officer cannot be sustained. The appellate order and the impugned order for the same reason cannot be sustained.

19. In view of the aforesaid discussions, the present writ petition has to be allowed and the punishment imposed on the petitioners quashed.

20. Learned counsel for the respondent states that they have been able to locate the question papers and indeed the allegations against the petitioners are correct. He has expressed surprise as to why the question papers were not produced. He submits that these question papers were deliberately held back.

21. In the facts of the present case, we would permit the respondents to undertake fresh enquiry from the stage of appointing a new enquiry officer by the Disciplinary Authority. The respondents are at liberty to lead proper evidence to establish the charges. We have given the said direction as the charges against the petitioners are very serious and for some unexplainable reason, the relevant evidence and material were not produced before the enquiry officer. As noted, the apprehension expressed is that the evidence was deliberately withheld.

22. As the matter is very old, in case the respondents proceed with fresh enquiry, they should take necessary steps expeditiously and the proceedings must conclude within the shortest possible time.

23. We clarify that the observations made above are for the decision of the present writ petition and would not be construed as observations on merits of the charges, which would affect the petitioners or the respondents.

24. With the aforesaid observation, the writ petition is disposed of. No order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

NOVEMBER 10, 2016/ssc